

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	GN Docket No. 09-51
)	

**COMMENTS OF FUNDS FOR LEARNING, LLC
on the DRAFT E-RATE ELIGIBLE SERVICES LIST
FOR FUNDING YEAR 2013**

The Commission has asked for comments on its draft Eligible Services List (“ESL”) for Funding Year 2013. The Commission is interested in, among other things, what the public thinks of the ESL’s new organization, which was designed to make it easier for applicants to determine what services and products are eligible for E-rate discounts. We believe that this reorganization might be helpful, but, as the State E-Rate Coordinator’s Alliance (“SECA”) has already noted in its comments, “this approach is less than optimal.” Like SECA, we fear that new names, groups, and checkboxes on the ESL will likely engender new and different types of confusion. What’s more, it will do nothing to fix a more pressing ESL-related problem, one that is actually quite central to the program and how well it works – namely, the ESL’s service-category structure: Telecommunications Services, Internet Access, Internal Connections, and Basic Maintenance of Internal Connections. We agree with SECA that it is time to modify this structure, and, moreover, that doing so represents a simpler, much more effective ESL solution than what is currently on the table.

Instead of two Priority One service categories, Telecommunications Services and Internet Access, we agree with the SECA that those two service categories ought to be combined into one. We will address this proposal in more detail, along with several other important ESL-related issues, in our comments below. The other subject matter we cover

includes: (1) Uninterruptible Internet Access service and Telecom Surcharges and Fees, both of which, we believe, should be eligible; (2) the need for a Notice of Inquiry to discuss a wide range of important basic maintenance-related eligibility issues; (3) the elimination of basic maintenance as a separate service category or, in lieu of that, the need to direct USAC to stop treating basic maintenance as a recurring service so that applicants no longer lose all or part of their BMIC funding, through no fault of their own, simply because USAC issued their funding commitments late.

I.

About Funds For Learning

After fifteen years of providing nothing but E-rate-related professional services, we believe that we have earned the right to call ourselves E-rate experts. Since 1997, Funds For Learning, LLC (“FFL”) has specialized in the application and compliance side of the E-Rate program. We are proud to note that FFL had a representative on the SLD’s Task Force on the Prevention of Waste, Fraud, and Abuse in 2003, and that another representative of FFL participated in the Commission’s public forum on the E-rate Program that same year. We have watched the program grow and evolve. We know firsthand how the program works, what works well, and what does not.

Applicants retain FFL to help them understand the program’s process and requirements, apply for and receive funding, and comply with program rules. Unlike some other organizations that operate in the E-rate “space,” we provide no procurement-related services, as that is literally none of our business. When companies retain us, they do so mostly to provide E-rate training and to answer E-rate questions and sometimes to manage their eligibility issues. FFL has an online presence, too. There, FFL provides E-RATE MANAGER[®] services, a collection of application and compliance tools for applicants, and, for service providers, E-rate training courses and advanced data mining tools to help them uncover E-rate opportunities more easily than at USAC’s website.

II.

The Four Service Categories in the ESL Should Be Consolidated Into Three: (1) Telecommunications/Internet Access (Priority One); (2) Internal Connections (Priority Two); and (3) Basic Maintenance of Internal Connections (Priority Two), and the Form 470 Should Reflect This Structural Change.

In its FY2013 ESL comments, SECA has proposed consolidating the eligible services categories from four to three by combining Telecommunications Services and Internet Access into a single category. That is an excellent suggestion. It would eliminate one of the E-rate program's most frustrating "gotchas" and help to speed up the application review process, while not diminishing in any respect the ability of service providers to uncover and compete for E-rate sales opportunities.

The E-rate program's success so far has been incontrovertible. But so is the fact that the program is confusing and more complicated than is required, which leads all too often to unnecessary, unwarranted denials of funding and increased administrative costs. That has been one of the program's most vexing weaknesses. In this proceeding, the Commission can effectuate real, meaningful, and immediate change simply by modifying the structure of the ESL ever so slightly and, later on, the Form 470.

In theory, the service-category structure is simple, but in its application, it is anything but; it is a complex framework that has tripped up many an unsuspecting applicant. That is because the receipt of funding depends on understanding exactly how it works, not making a mistake and, quite frankly, a little bit of luck. Some services overlap categories, which is confusing, and worse, the correct category sometimes depends on the type of company that the applicant ultimately selects to provide the service, something that applicants will not (or at least should not) know in advance. What the existing structure does, in essence, is force applicants to play E-rate roulette with their funding. The game is disturbingly simple: pick a service category field on the Form 470 to describe the services that your school or library wants to procure; if you pick the wrong field, your school or library receives no funding for those services.

As the Commission knows all too well, there are many staff people who are responsible for managing their organization's E-rate applications who have little or no telecommunications and/or E-rate experience. That is why many of them, and sometimes experienced staff too, either pick the wrong service-category field on a Form 470 or fail, when the rules require, to duplicate the same description in another service-category field on that form. This should not be surprising, as the process is anything but user friendly. Indeed, it is just the opposite. *We, SECA, and everyone involved with the E-rate program with whom we have ever discussed this subject believe strongly that no good purpose is served by allowing USAC to deny funding to applicants who accidentally describe the services that their schools or libraries want to purchase in the wrong Priority One field or not enough Priority One fields on a Form 470.* Those are harmless mistakes that have no impact on competition - or anything else, for that matter. That is why we agree with SECA that that the Commission should remedy this problem by combining Telecommunications Services and Internet Access into a single, Priority One service category, thus eliminating the distinction between Telecommunications Services and Internet Access -- at least so far as the Form 470 posting process is concerned, but ideally, as SECA suggests, for all E-rate application purposes (including restrictions on the ability of certain providers to provide discounted telecommunications services).

A three, rather than a four, service-category structure would give applicants three, easily distinguishable service categories on the Form 470 from which to choose: (1) Telecom/Internet; (2) Internal Connections; or (3) Basic Maintenance. That would radically reduce the likelihood of applicants filling in the wrong service fields or not enough service fields on that form. That would reduce the number of USAC funding denials due to inconsequential Form 470 "service field" errors. And that is exactly the kind of change this program needs.

In support of its proposal to consolidate the two Priority One service categories, SECA makes several good arguments. In one of them, SECA argues that moving from two Priority One service categories to one reflects the convergence of telecommunications and Internet services in the marketplace and, moreover, not only

would it not be burdensome for service providers to review one list of procurement requests for Priority One services, it would actually be simpler than reviewing two. We very much agree.

In fact, we do not think this argument goes far enough. In today's digital age, where "search" functionality is both basic and ubiquitous, the Commission should not have to require applicants to pigeon-hole services into specific service categories on a Form 470 in order for service providers to find them. That is so 1998. Today, there are better and more sophisticated ways to do that. If USAC would only provide them, service providers across the country could use Internet search tools to identify E-rate opportunities quickly, no matter what field on the form the descriptions of services appeared. For years, the country's largest telecommunications, Internet, and Internal Connections providers, as well as many of their medium and smaller-sized competitors, have been easily finding all of the Form 470s that interest them by using FFL's E-RATE MANAGER[®] search tools to examine those forms for terms that are relevant to the services that they provide. If USAC offered similar tools, every service provider could do the same.

When it comes to making ESL changes, the Commission certainly ought to give priority to simple changes that are clearly going to yield important, positive results. And that, we submit, is exactly what the structural change that SECA has proposed will do. There is no doubt in our mind that this change will help to reduce the amount of complexity in the program and, in turn, help to reduce the number of applicants who wind up having their funding requests denied unfairly.

III.

Uninterruptible Internet Service

Uninterruptible Power Supply (UPS) and Uninterruptible Internet Service (UIS) are Conceptually and Functionally Equivalent. Funding One (UPS) But Not the Other (UIS) Is Completely Arbitrary. Therefore, UIS Should Be Eligible.

To "put all your eggs in one basket" is to risk losing everything all at one time.¹

The goal was to make technology a part of the daily pulse of every school and library. The goal line has almost been reached. Today, wherever broadband is available, most, and in many cases all, mission critical applications in schools and libraries, from education to administration to security to transportation and beyond, are all Internet driven. That is why schools and libraries can no longer afford to put all of their "Internet eggs" in one "ISP basket." To do so, would be to risk losing everything all at one time.

That, and because it clearly is an eligible service, is why Uninterruptible Internet Access service ("UIA") should be added to the ESL. Schools and libraries should not be penalized for integrating technology successfully into the vital and essential services they provide to their local communities. If the Commission will not allow schools and libraries to contract with a failover Internet service provider for discounted UIA, that is exactly what will continue to happen.

Times Have Changed.

For schools and libraries, fourteen years worth of technological advances and E-rate funding have made a world of difference. To help appreciate just how far we have come, here is a rough illustration:

1998

IP Devices in Schools: wired desktop computers, accessed primarily in computer labs, some classrooms, and some administrative offices.

Internet used for email, word processing, spreadsheets, presentations; research, basic skills training, some classroom lessons.

¹ <http://www.goenglish.com/DontPutAllYourEggsInOneBasket.asp>

2012

IP Devices in Schools: desktop computers throughout the school, wireless laptops, tablets, smartphones, IP telephony systems, videoconferencing and distance learning systems, video surveillance and physical security systems, IP-operated HVAC systems and so on.

Internet used for the same functions as in 1998 plus, for example, online learning and videoconferencing, school websites, administrative functions, bus monitoring, student safety (IP security cameras), controlling HVAC and physical security, standardized testing and reporting, parent-teacher communications, and so on.

Unlike Before, Uninterruptible Internet Access is Now a Necessity

To serve the educational needs of our children and to keep them safe, it is obvious that schools must be able to function normally. Today, without access to the Internet, that is no longer a realistic expectation. In that regard, the needs of today's schools and libraries are no different from businesses that depend on Internet-based applications. All ISPs are subject to congestion and other performance problems and most suffer service outages. To ensure that their ISP's problem will not disrupt their business operations, those kinds of businesses contract with multiple ISPs to ensure uninterrupted Internet access. That is the downside to successful technology integration.

When a school district's ISP goes down and its access to the Internet along with it, the situation begins to deteriorate quickly. Here is a typical scenario: schools in the district immediately become vulnerable to security risks, making student safety a major concern, schools lose communication with the district's administrative offices and with each other, instruction becomes impossible to deliver, and all testing stops. That is why Uninterruptible Internet Access ("UIA") is no longer a luxury. Today, it is essential.

The times have changed, and of course technology and communications have changed right along with them. In today's schools, and in libraries too, Internet access has become every bit as essential to education and safety as electric power once was by itself. Which leads us directly to the subject of emergency preparedness. Uninterruptible Power Supplies (or UPS devices) and Uninterruptible Internet Access (or UIA) are now,

for all intents and purposes, essentially two sides of the same coin when it comes to being prepared for the unexpected, which, unfortunately, we have increasingly come to expect.

UPS devices, which are eligible, ensure uninterrupted access to the Internet by providing emergency power to eligible pieces of equipment, if and when the power fails. (ESL Draft at 51). UIA service, which today is ineligible, provides *exactly the same* mission critical functionality. UIA service guarantees bandwidth for a school district's most important applications by providing an emergency link to the Internet, if and when the primary ISP fails. As soon as that ISP goes down, ISP failover is triggered automatically, switching the school district's critical Internet traffic to a functioning link via the UIA provider. Thus it clearly makes no sense not for UPS and UIA *both* to be eligible. We cannot envision any logical way around that conclusion.

Under the legal framework that defines E-rate eligibility, there is no question that UIA should be eligible. That said, we still can appreciate why the current, overwhelming demand for E-rate funds might make the Commission a little bit reluctant to add anything new to the ESL. To the best of our knowledge, though, the Commission has never ruled that cost is a factor in determining whether a particular service satisfies the legal definition of an E-rate eligible service. But even if it is, cost need not and certainly should not be a "deal breaker" when it comes to adding UIA to the ESL. We are not blind to the economic reality in which the fund has to operate, so we appreciate the need to be creative.

Therefore, to minimize the impact on the demand for funding that adding UIA might have, and assuming, for argument's sake, that this is a relevant consideration, the Commission could consider, for example, limiting the amount of funding that an applicant could request for UIA. Limiting applicants to a percentage, say sixty percent for example (to begin the discussion), of what they request for their primary Internet Access service might be the solution. It would be much better than nothing. Indeed, it might be all that is needed to make this essential failover service affordable.

IV.

PROPOSALS SUBMITTED IN PRIOR YEARS THAT REMAIN RELEVANT AND CONTINUE TO DESERVE THE COMMISSION'S ATTENTION

A The Commission Should Issue a Notice of Inquiry About Basic Maintenance of Internal Connections

<http://apps.fcc.gov/ecfs/document/view?id=7021692678> (FFL Comments)

See <http://apps.fcc.gov/ecfs/document/view?id=7021696969> (AT&T Support)

Note: 59% of applicants who receive P2 funding state that they “rely on E-rate funding for basic maintenance support”. *2012 Survey Part 1: The E-rate Program is Critical to Applicants' Success.*

<http://www.fundsforlearning.com/blog/2012/07/2012-survey-part-1-e-rate-program-critical-applicants%E2%80%99-success>

FFL believes that the existing BMIC eligibility regulations significantly reduce the effectiveness and benefit of the E-rate program's support for critical maintenance services. While the Commission's desire to be a good steward of E-rate resources by ensuring that funds are only disbursed for “actual work performed” is indeed noble, we believe that its new policy in this regard has instead forged a deep chasm -- with the program's eligibility regulations on one side and industry standards for the delivery of enterprise-class network maintenance services on the other. This leaves applicants and service providers in the middle, struggling desperately to build a new bridge to satisfy both the needs of applicants for affordable BMIC and the requirements of the E-rate program for cost effectiveness, while at the same time making sure to create and retain all of the documentation necessary to satisfy whatever USAC ultimately decides to demand in that regard.

It seems obvious to FFL and to many of the stakeholders with whom we speak that the Commission based its new eligibility rules and guidance regarding warranties and retainer contracts on a set of assumptions about the marketplace that was not corroborated by those who actually sell, provide, and buy local area network maintenance services. Because of this, FFL believes that all E-rate stakeholders, USAC and the

Commission included, would benefit from additional discussion on the topic of BMIC. Thus, FFL proposes that the Commission open a Notice of Inquiry dedicated to E-rate Basic Maintenance, with the goal of collecting additional data on the true maintenance needs of applicants as well as the availability and cost(s) of industry standard maintenance solutions. Through this process, the eligibility regulations could be updated and refined to provide the same synergy that the other sections of the ESL share with their respective marketplaces.

Among the topics that we believe would benefit from public discourse are the following:

- *Do the current BMIC eligibility regulations enhance or impede applicants' ability to make cost-effective purchasing decisions for BMIC services?* Without question, extended warranties, advanced hardware replacement contracts, and retainer contracts are very common. But are alternative solutions – such as “pay-as-you-go” work, time and materials (T&M) contracts, or other per-incident maintenance agreements truly more cost-effective?
- *Do the current BMIC eligibility regulations enable applicants to select maintenance services that adequately address their technology goals and objectives?* If fixed-price hardware maintenance agreements are effectively ruled out, do alternative services exist that provide a comparatively robust technical solution? How is network maintenance most commonly delivered, and how does this method compare – in terms of cost and functionality – to alternatives?
- *How does the treatment of BMIC services as “recurring” and the requirement that they be delivered between July 1 and June 30 of the funding year affect applicants?* Because Priority 2 funding requests are generally funded much later in the funding year than Priority 1 services, many applicants are forced into either paying upfront for needed maintenance services (and seeking reimbursement after funding requests are approved) or simply foregoing maintenance services until funds are committed. In Funding Year 2009, approximately 50% of the BMIC funds committed after January 1, 2009 received no disbursement,² resulting in unutilized funding commitments of roughly \$41.7 million. These regulations continue to create significant issues for applicants who cannot afford to proceed with needed maintenance coverage without E-rate funding. Consequently, much

² Data downloaded via E-RATE MANAGER[®] from USAC's E-rate database on July 15, 2011.

of the network equipment that the E-rate program has paid for is not being adequately maintained, and E-rate-supported networks are not functioning as well as they should and could – but for this programmatic glitch. For a more detailed discussion of this issue, please see FFL’s 2011ESL comments.³

- *Do the current BMIC eligibility regulations provide adequate protection against waste, fraud, and abuse?* If E-rate funds are only disbursed for “actual work performed,” what measures are in place to ensure that charges presented for payment are for legitimate work that was performed? Should the program administrator be required to evaluate each claim of “work performed” to ensure that it was indeed necessary and not frivolous? Do the current rules encourage vendors to create a “special class” of maintenance services for E-rate applicants, and can we ensure that these new services are cost-effective?
- *Does the elimination of funding for warranties and prepaid retainers truly affect BMIC demand and disbursements?* Funding Year 2011 BMIC requests totaled just over \$293M, as compared to \$290M in FY2010 and \$278M in FY2009. We presume, then, that many applicants submitted funding requests that represent their estimated hardware maintenance needs in FY2011. We must further presume that most of those applicants believe that those needs will be more or less equivalent to the charges they incurred in years past.
- *How do the current BMIC eligibility regulations affect program administration and operational efficiency?* We have plenty of anecdotal evidence from applicants and service providers that suggests that finding (or offering) time and materials and/or per-use maintenance contracts can be difficult and time-consuming. Do the rules also place undue administrative burden (and therefore costs) on USAC?

We believe that a BMIC Notice of Inquiry would yield valuable information from both applicants and service providers on the topic of BMIC, which the Commission then could use to refine and clarify the BMIC eligibility regulations in a way that alleviates much of the ambiguity and confusion that we currently observe among stakeholders, and enable applicants to maintain their networks in the most cost effective manner possible.

³ <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015665835> at pp. 9-12.

B. All Telecom Surcharges and Fees Should Be Eligible

In its FY 2012 ESL comments, SECA explained why the nominal fees and surcharges that appear on monthly phone bills are eligible or, at the very least, should be considered *di minimis*. We agree wholeheartedly with everything SECA had to say in that regard.

SECA's observation about USAC's work in ferreting out these relatively insignificant surcharges and fees from monthly phone bills developing into an enormous administrative burden on the program is especially worth noting. It takes an astonishing amount of time for applicants to weed out those charges in the first place and, thereafter, an equally shocking amount of time for USAC's PIA staff to review the applicants' work -- especially when so many of the bills that applicants and USAC have to review are more than 100 pages long (up to 1,000 pages for large school districts). USAC exacerbates the problem by reviewing applicants' phone bills not once, but twice -- first it examines sample bills submitted during the application review process to support projected costs and then the "real" bills submitted for payment. This, as SECA explains, is the problem:

Schools and libraries are compelled to review every line of every bill, many of which are hundreds of pages each month, to identify which of these small fees must be cost allocated and removed from their BEAR reimbursement or their Form 471 request. This task is further complicated when the school or library personnel try to decipher which charges are eligible and which are not because there is no consistent naming conventions between carriers and no comprehensive list of which charges are eligible and which are not. PIA and invoice reviewers spend a disproportionate amount of time weeding through Item 21 attachments and invoices, posing follow-up questions, to ensure that none of these rather miniscule charges are included as part of authorized funding or disbursement.

We do not understand why, when it is so important for USAC to be issuing funding commitments as quickly as possible, it continues to waste valuable time and resources so early in the funding cycle on such tedious, time-consuming, unproductive work such as this. As a practical matter, this kind of pre-commitment hunt for phone company fees and surcharges on old telephone bills is never going to save the program

any meaningful amount of money or further any important policy of the program, like relieving pressure on demand for example. These are some of the reasons why:

(1) At this early point in the process, applicants are simply making good faith estimates of their next year's total eligible phone charges based on sample bills from the year before, and the relatively small amounts involved for fees and surcharges are not going to significantly affect those projections;

(2) Applicants' estimates of future phone charges are never going to be one hundred percent accurate, especially in large school districts where moves, adds and changes occur regularly;

(3) Estimates of total phone charges for the year frequently wind up on the high side for a variety of other reasons (e.g., lower than expected usage; lines installed late or not at all; fewer moves, adds or changes; delayed construction); consequently, there is very little risk that an applicant's estimate will wind up being too high solely because of the surcharges and fees included in it;

(4) Eliminating nominal charges from an estimate on the front end will never stop some of those charges from slipping through the cracks and appearing on invoices on the back end; and

(5) The only way to ensure that E-rate money is not used to pay for nominal surcharges and fees on monthly phone bills, if this is something that the Commission concludes USAC must do, is for USAC to review applicants' phone bills before it pays them.

Like SECA, we believe strongly that these kinds of fees and surcharges are eligible or at least *di minimis*, and that it does the program a tremendous disservice to require applicants and USAC to look for and weed them out at any point in the process. Therefore, we join SECA in urging the Commission to put an end to these burdensome, unnecessary reviews. If the Commission disagrees, however, then we ask the Commission to please instruct USAC to rifle through bills for these charges only once and only when it matters – when invoices are submitted for payment.

C. **Eliminate Other Unnecessary Application Review Practices**

- **USAC should stop treating form 471 estimates like actual invoices.**

To estimate the average monthly cost of telecommunications services to include in its next year's E-rate application, applicants look to, among other things, old invoices that are representative of what its monthly costs are likely going to be. During the application review process, PIA reviewers will request to see those sample invoices.

The problem is that PIA reviewers routinely treat those old, sample invoices as if they were actual invoices pending payment, reviewing each line item carefully and reducing funding requests by as little as one dollar or even 35 cents as a result. Inevitably, this process leads to multiple back and forth correspondence between the applicant and PIA, further lengthening the time it takes for USAC to issue a funding commitment.

PIA staff should not be spending valuable review time microscopically examining and dissecting sample bills in this fashion. USAC's Invoice Department conducts its own review before paying invoices. That is when USAC should be removing ineligible charges that are not *di minimis*, which the applicant or service provider might have missed, and, quite frankly, USAC's Invoice Department is very good at this kind of work.

- **USAC should stop reducing funding to reflect billing period, rather than actual monthly, amounts.**

We know from experience that at least some PIA reviewers have cost applicants time and funding by requiring them to remove from their estimates amounts for telecommunications services equal to the monthly service charges that appeared, due to billing cycles, on their following month's sample bill. For example: a telecommunication carrier ends its billing period on the 23rd of every month; the service fee for the 24th through the end of the month appears on the next month's invoice; during PIA, the reviewer will require the applicant to remove from its monthly estimate the cost of service for the end of the first month (from the 23rd on) that appeared on its next month's

bill, explaining that those charges “fall outside the current billing period.” The rationale for this escapes us since the issue is monthly estimated costs to support a funding request and not whether a particular invoice is inside or outside any particular billing period. The irony in all of this time wasted in reducing telecom requests is that at the invoice stage, the FCC Form 471 instructions specifically instruct an applicant to simply use the DATE of the invoice, and not the date the service occurs. The date on the invoice for telecommunications services is always after the service has occurred.

- **USAC should stop requiring applicants to move line activation fees from the recurring to the non-recurring services category.**

Currently, PIA reviewers spend time moving charges on monthly recurring telephone service invoices from the recurring service line item 23 A on the Form 471 to the non-recurring service line item 23 F, even though there does not appear to be any legal, practical, or systemic reason for doing so. The types of charges that are being moved from one line to the next are typically activation fees for additional lines or moves and additions.

For large school districts, these relatively small charges occur on a monthly basis and appear buried in invoices that are typically 300-1000 pages long. USAC does not dispute that those charges are fully eligible. Nevertheless, its reviewers force applicants to find and identify them. They do this, apparently, for no other reason than to move the estimated charges from one line in Block 5 of a Form 471 to another line in the same form. This is a questionable use of everyone’s time.

When USAC issues a FCDL, it assigns one approved dollar amount to each FRN. It does not maintain two separate accounts for one FRN, one for recurring and another for monthly telecom services. If USAC has a sound administrative reason for this practice of ferreting out eligible line activation charges and changing how they are labeled on application forms, USAC should articulate it to the Commission and to the public, and by all means continue it. If, on the other hand, USAC fails to or cannot justify it, we urge the Commission to direct USAC to end it.

D. Basic Maintenance of Internal Connections Should be Eliminated as a Separate Eligible Service Category or Not Treated as a Recurring Service

In an effort to make basic maintenance funding more useful to applicants and the distribution of E-rate support more equitable, we suggest that the Commission eliminate the 2 in 5 rule and return “Basic Maintenance of Internal Connections” to the Internal Connections category where it belongs. If the Commission decides not to eliminate it as a separate category, then FFL suggests the following three changes instead:

1. Treat Basic Maintenance in a manner consistent with other Priority Two services.
2. Allow Basic Maintenance services to extend beyond the June 30 end of the funding year.
3. Allow Applicants to file service delivery deadline extension requests for Basic Maintenance when applicable.

These suggestions would allow more applicants to make better use of their Basic Maintenance funding commitments. The advantage to the E-rate program, of course, is that applicants will be more likely to purchase the maintenance needed for the upkeep of equipment purchased with E-rate support.

In the *Third Report and Order*, the Commission created a separate category for the Basic Maintenance of Internal Connections.⁶ As a result of that order, the ESL for Funding Year 2005, included the following:

Basic Maintenance ensures the necessary and continued operation of eligible internal connection components at eligible locations. A technical support contract that provides more than basic maintenance is not eligible for E-rate discounts. Funding for basic maintenance is not

⁶See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 at Para 21, (2003) (*Schools and Libraries Third Order*), which states: “We instruct USAC to revise Block 5 of the FCC Form 471 to include a separate category of service for maintenance requests, with this form change to take effect for Funding Year 2005. Maintenance requests will continue to be funded as Priority Two funding. However, maintenance requests will be considered for funding separately from other requests for Priority Two funding and, therefore, will not be subject to the twice-every-five years funding rule we adopt in this Order. The revision of the FCC Form 471 will allow efficient review of the Priority Two funding requests.”

subject to the provisions indicated in the document “Two Out of Five Rule’ for Internal Connections,” available in the SLD Reference Area of the USAC web site. *All requests in this category will be treated as recurring services with services to be delivered within the July 1 to June 30 Funding Year* (emphasis added).

Accordingly, USAC has treated the Basic Maintenance of Internal Connections as a recurring service since that time. This treatment causes difficulties and hardships for both applicants and service providers, which we do not believe the Commission foresaw. We have outlined the problems below, along with suggestions for fixing them.

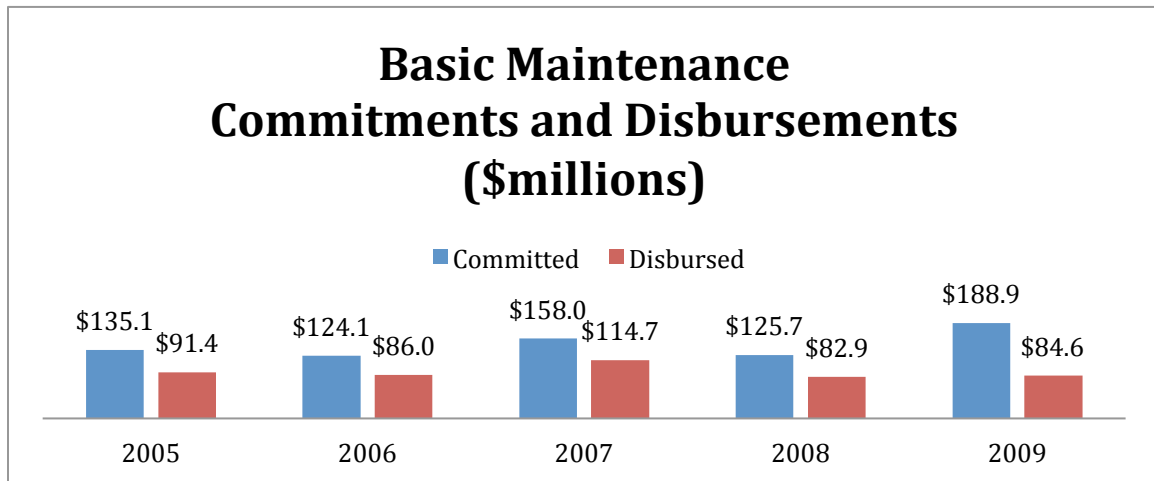
In today’s marketplace, many Basic Maintenance services are sold on a 12-month basis with a one-time annual cost. These include manufacturers’ warranties and maintenance contracts that provide failed hardware replacement as well as software updates, patches, and bug fixes. As a rule, services rendered under these types of maintenance contracts are provisioned on an as-needed (or “break-fix”) basis, meaning that services are only rendered when an “event” (usually hardware or software failure) has occurred. Because of this, it is difficult for applicants and service providers to determine a true monthly value for such a contract. As an example, suppose an eligible network switch experiences a failure in July and is replaced under the manufacturer’s maintenance contract. While the actual services rendered under the contract occur in July, the benefit extends for the remainder of the contract (assuming no additional failures are experienced during the contract period.) Many manufacturers provide this type of maintenance service for a specified period of time after hardware is purchased, and then offer “renewals” for subsequent time periods.

Because they are treated as a Priority Two service, Basic Maintenance funding requests are reviewed and funded by USAC much later in the funding year than requests for Priority One services. However, USAC’s current interpretation of FCC policy mandates that Basic Maintenance services be rendered in the July 1 to June 30 timeframe. Under this scenario, for an applicant to receive the full benefit of a 12-month maintenance contract (and receive E-rate support for that contract within a single funding year), they likely will be required to:

1. Align their maintenance contract term(s) to match the dates of the E-rate funding year.
2. Pay the service provider(s) in full for maintenance service when E-rate funding requests for those services are still pending.

It is never easy and sometimes impossible for applicants to achieve. Many public school districts and library systems (especially those with high E-rate discount rates) have extremely tight budgets and are simply not able to pay for 100% of the maintenance contracts for eligible equipment upfront without the promise of E-rate support. In addition, it is often difficult for applicants to re-align their yearly contract terms to match the E-rate funding year dates without experiencing a lapse in coverage.

This results in funding commitments going unutilized. As illustrated in the following chart, over \$272 million in Basic Maintenance funding commitments have not been disbursed by USAC. This represents more than one-third of all Basic Maintenance funding commitments.



To further confuse matters, many Basic Maintenance funding requests are inseparably tied to applicants' Internal Connections projects, meaning that in any given funding year an applicant will purchase new equipment (via an Internal Connections funding request) and maintenance on that equipment (to begin once the equipment is installed). If the E-rate funding request(s) supporting the equipment purchase are not approved until late in the funding year, it is impossible for the applicant to start

maintenance services on July 1, as the equipment to be maintained will not yet be purchased and installed.

The entire manner in which Basic Maintenance requests are funded results in a good deal of frustration within the applicant community. Because maintenance services oftentimes cannot begin on the July 1 funding year start date, coverage provided under a 12-month maintenance contract purchased in the middle of a funding year will stretch into the following funding year. However, the “break-fix” nature of the contracts make determining a monthly cost-allocation very difficult, and accounting for services rendered under “multi-year contracts” involve a substantive amount of additional E-rate regulatory compliance as well as complications during the procurement process.

In Funding Year 2008, USAC issued more than \$125 million in Basic Maintenance funding commitments several months after the July 1, 2008 funding year start date. Indeed, 19.6% of the Basic Maintenance dollars commitments were not issued a funding decision until after June 30, 2009, the funding year end date⁷. As the table below shows, a whopping \$30,576, 318 committed for basic maintenance with an average March 2009 FCDL date never got used at all. When USAC issues these kinds of decisions late, it forces the late-funded applicants to pay for 100% of the maintenance services upfront, thereby effectively revoking their entitlement under the E-rate program to receive discounted invoices, which, in many cases, leads to undue, unfair, and unnecessary economic hardship.

Utilization of FRN	BENs	FRNs	Committed Amount	Disbursed Amount	FRN Balance	Average FCDL Date
High (>95%)	1,274	2,552	57,932,428	57,768,541	163,887	Nov. 2008
Average (55%-95%)	216	277	26,084,260	21,778,503	4,305,757	Dec. 2008
Low (25%-54%)	114	122	6,306,039	2,579,846	3,726,193	Dec. 2008
Very Low (<25%)	71	80	4,762,947	778,015	3,984,932	Nov. 2008
FRN Completely Unused	541	923	30,576,318	-	30,576,318	Mar. 2009
TOTAL	3,954	3,954	125,661,992	82,904,905	42,757,087	

⁷ Analysis current as of July 1, 2010, using <http://www.eratemanager.com>.

Something as simple as eliminating the 2 in 5 year Rule and Basic Maintenance of Internal Connections as a separate eligibility category will enable applicants to maintain their telecommunications networks far more effectively than they are able to do now, restore equity and common sense to the funding process for internal connections maintenance, and substantially reduce frustration throughout the E-rate community. We have made this suggestion before, and we are including it here again because of how important we believe it is to initiate these changes as quickly as possible. With the Commission seriously considering the elimination of the 2 in 5 rule now, and assuming it does so, this would be the time to take the next logical step.

Respectfully submitted,

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